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JONES *v.* ALBERT.

Jan. 13, 1916.

[87 S. E. 564.]

Reformation of Instruments (§ 47*)—Mistake—Recovery of Excess.

—Where plaintiff, in exchange for defendant's farm, agreed to convey his own farm with a guaranty that there would be 326 acres after taking off 115 acres more or less to a third party, and there was a mistake in the boundary of the land set off to such third party, whereby the land set apart to him contained only 101 acres instead of 115 acres, but the residue of the farm contained 371 acres or a considerable area above that guaranteed, the plaintiff was entitled to a reformation of his deed to defendant so as to take 13 acres from defendant's land immediately adjoining that set apart to the third person, with the option to defendant to retain the land and pay plaintiff its value.

[Ed. Note.—For other cases, see Reformation of Instruments, Cent. Dig. §§ 74, 76, 78; Dec. Dig. § 47.* 9 Va.-W. Va. Enc. Dig. 874.]

Appeal from Circuit Court, Montgomery County.

Bill by J. A. Albert against M. Wiley Jones. Decree for plaintiff, and defendant appeals. Affirmed.

Roop & Phlegar, of Christianburg, and *Johnston & Izard*, of Roanoke, for appellant.

A. P. Staples, Jr., of Lexington, and *A. B. Hunt*, of Roanoke, for appellee.

HOLDSWORTH *v.* ANDERSON DRUG CO.

Jan. 13, 1916.

[87 S. E. 565.]

1. Bills and Notes (§ 491*)—Actions—Pleading—Nil Debet.—At common law, where defendant pleaded nil debet when sued on a note, the burden was on plaintiff to prove that defendant made the note sued on, that the payee indorsed and negotiated it to the plaintiff before maturity for a valuable consideration, that plaintiff was the holder in due course without notice, and that the instrument was still due and unpaid, since the plea puts in issue every material allegation of the declaration or other pleading to which it is interposed.

[Ed. Note.—For other cases, see Bills and Notes, Cent. Dig. §§ 1643-1648 Dec. Dig. § 491.* 2 Va.-W. Va. Enc. Dig. 489.]

2. Bills and Notes (§ 516*)—Prima Facie Case—Statute—"Holder in Due Course."—Under Negotiable Instruments Law (Code 1904, § 2841a) subsec. 59, providing that every holder is deemed prima facie

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.